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Supreme Court of the United States

October Term, 1965

No. 396

Hugo DeGregory, Appellant

v.

**Attorney General of the
State of New Hampshire, Appellee**

**Appeal from the Supreme Court of
The State of New Hampshire**

BRIEF FOR APPELLEE

THE STATE OF NEW HAMPSHIRE

By

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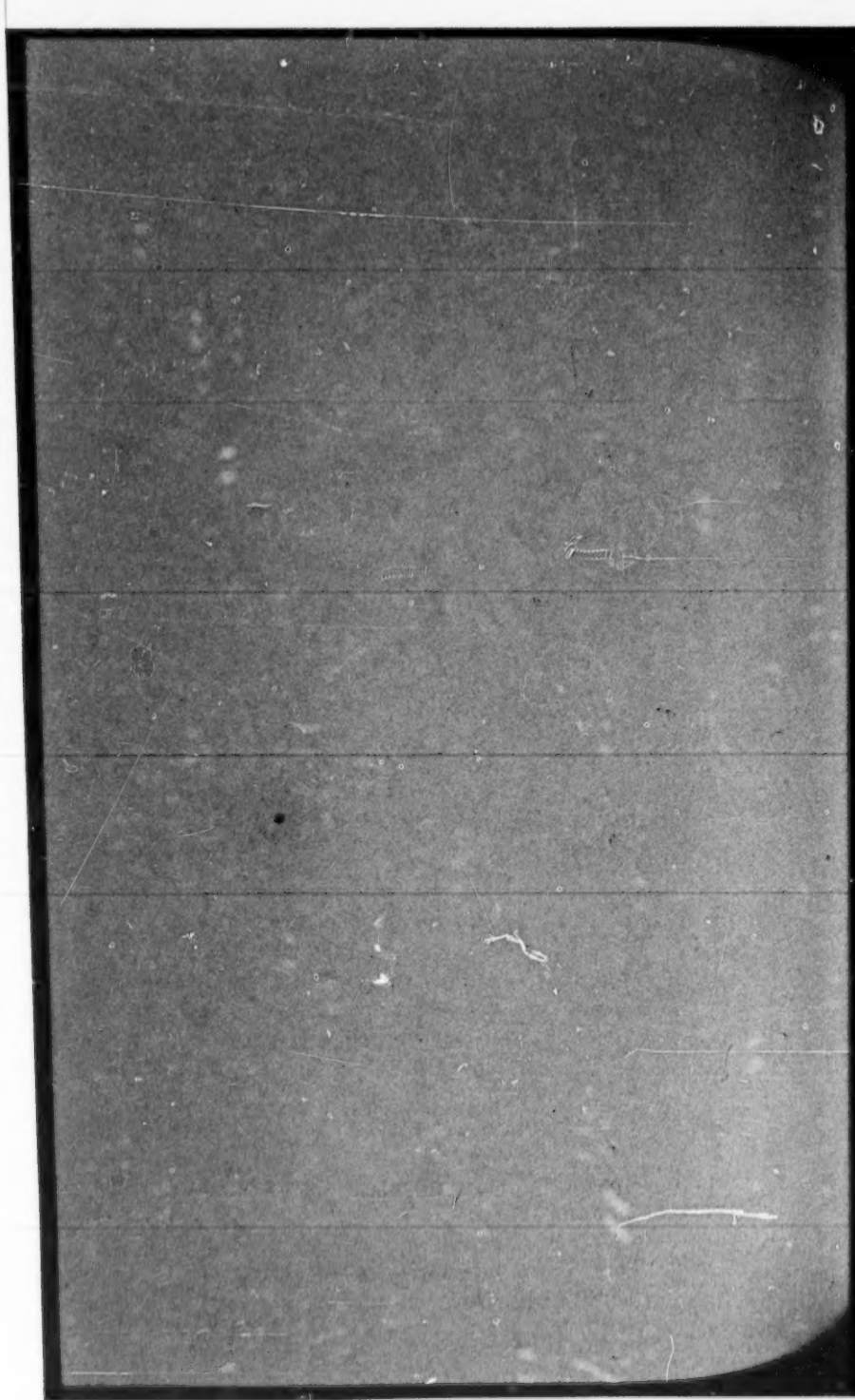
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i
INDEX

	PAGE
STATEMENT OF THE CASE	1
QUESTIONS PRESENTED	3
SUMMARY OF ARGUMENT	4
I. The New Hampshire Supreme Court employed the proper legal tests in upholding the constitutionality of the Attorney General's action as a Legislative Investigating Committee.	9
II. The determination of the New Hampshire General Court authorizing a continuous review of subversive activities in and affecting the State of New Hampshire by the Attorney General acting as a Legislative Investigating Committee was a legitimate exercise of governmental power.	11
III. The foundations prerequisite to the institution of investigation into subversive activity and the interrogation of Appellant have been laid by the Attorney General with respect to the subject matter under investigation and Appellant's relation thereto.	14
[A] The Communist Party.	17
[B] Appellant's relationship or nexus to the Communist Party	19
[C] The Communist Party in and affecting the State of New Hampshire	23

IV.	The cases of <i>American Committee for Protection of Foreign Born v. Subversive Activities Control Board</i> and <i>Veterans of The Abraham Lincoln Brigade v. Subversive Activities Control Board</i> are not controlling.	28
V.	The questions propounded to Appellant by the Attorney General were relevant with reference to the subject under investigation notwithstanding the blanket denial of Appellant of any knowledge of possible pertinent facts relating to the past six and one-half years.	30
VI.	The Appellant's constitutional rights were not violated with reference to the Attorney General's duty to lay a foundation with respect to apprising Appellant of the topic under inquiry and the connective reasoning whereby the precise questions relate to it.	34
	CONCLUSION	35
	APPENDIX (A-K)	36-82

SUPPLEMENTAL INDEX TO APPENDICES

	Page
A. United States Constitution Amendments 1, 4, 14(1)	36
B. New Hampshire Revised Statutes Annotated Chapter 491	37
C. New Hampshire Revised Statutes Annotated Chapter 588	38
D. Louis C. Wyman, Attorney General v. Hugo DeGregory, 103 N.H. 214	49
E. Hugo DeGregory, Appellant, v. Attorney General of New Hampshire 368 US 19, 7 L ed 2d 86, 62 S Ct. 137	55
F. William Maynard, Attorney General v. Hugo DeGregory 106 N.H. 263	56
G. Communist Activities in New Hampshire	62
H. Organizational Structure of the Communist Party in New Hampshire	65
I. Brief History of Communist Party in New Hampshire	67
J. Discernible Highlights of the Communist Party in New Hampshire	70
K. Hugo DeGregory	78

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12

iii.

CASES CITED

	PAGE
American Committee For Protection of Foreign Born v. Subversive Activities Control Board 380 U.S. 503, 14 L ed 2d 39, 85 S. Ct. 1148 (1965)	28
Attorney General v. DeGregory, 106 N.H. 262, 209 A 2d 712 (1965)	3, 5, 9, 10, 17, 35
Barenblatt v. U.S., 360 U.S. 109, 3 L ed 2d 1115, 79 S. Ct. 1081 (1959)	6, 7, 8, 9, 18, 22, 26, 28, 30, 34
Braden v. U.S., 365 U.S. 431, 5 L ed 2d 653, 81 S. Ct. 584 (1961)	8, 20
Carlson v. Landon, 342 U.S. 524, 96 L ed 547, 72 S. Ct. 525 (1952)	19
Chapman, In re, 166 U.S. 661, 41 L ed 1154 (1897)	30
Communist Party of The United States v. Subversive Activities Control Board, 367 U.S. 1, 6 L ed 2d 625, 81 S. Ct. 1357 (1961)	8, 29, 33
DeGregory v. Attorney General, 368 U.S. 19, 7 L ed 2d 86, 82 S. Ct. 137 (1961)	2, 4, 5, 6, 8, 10, 11, 12, 15, 16, 19, 22, 33
Dennis v. U.S., 341 U.S. 494, 95 L ed 1137, 71 S. Ct. 857 (1951)	11
Gibson v. Florida Legislative Investigation Committee, 372 U.S. 539, 9 L ed 2d 929, 83 S. Ct. 889 (1963)	6, 7, 11, 18, 19, 20, 21, 26, 28
Gitlow v. New York, 268 U.S. 652, 69 L ed 1138 (1925)	11
Journey v. MacCracken, 294 U.S. 125, 79 L ed 802 (1935)	12
Kahn v. Wyman, 100 N.H. 245, 123 A 2d 166 (1956)	10

iv.

	PAGE
Kilbourn v. Thompson, 103 U.S. 168, 26 L ed 377 (1881)	12
McGrain v. Daugherty, 273 U.S. 135, 71 L ed 580 (1927)	12, 30
Nelson v. Wyman, 99 N.H. 33, 105 A 2d 756 (1954)	9, 11, 33
Pennsylvania v. Nelson, 350 U.S. 497, 100 L Ed 640, 76 S. Ct. 477 (1956)	7
Sinclair v. U.S., 279 U.S. 263, 73 L Ed 692 (1929)	8, 12
Sweezy v. Wyman, 354 U.S. 234, 1 L ed 2d 1311, 77 S. Ct. 1203 (1957)	10, 22
United States v. Josephson, 165 F 2d 82 (2 cir 1947)	30
United States v. Ormand, 207 F 2d 148 (3d cir 1953)	30
United States v. Rumely, 345 U.S. 41, 97 L Ed 770, 73 S. Ct. 543 (1953)	30
Uphaus v. Wyman, 355 U.S. 16, 2 L ed 2d 22, 78 S. Ct. 57 (1957)	10
Uphaus v. Wyman, 360 U.S. 72, 3 L ed 2d 1090, 79 S. Ct. 1040 (1959)	5, 7, 8, 10, 11, 12, 16, 22, 33
Veterans of the Abraham Lincoln Brigade v. Subver- sive Activities Control Board, 380 U.S. 513, 14 L ed 2d 46, 85 S. Ct. 1153 (1965)	28
Watkins v. United States, 354 U.S. 178, 1 L ed 2d 1273, 77 S. Ct. 1173 (1957)	9, 21, 34
Wilkinson v. U.S., 365 U.S. 399, 5 L ed 2d 633, 81 S. Ct. 567 (1961)	20
Wyman v. DeGregory, 101 N.H. 171, 137 A 2d 512 (1957)	10

v.

	PAGE
Wyman v. DeGregory, 103 N.H. 214, 169 A 2d 1 (1961) 2, 4, 5, 6, 8, 10, 11, 12, 15, 16, 19, 23, 33	
Wyman v. Sweezy, 100 N.H. 103, 121 A 2d 783 (1956)	10
Wyman v. Uphaus, 100 N.H. 436, 130 A 2d 278 (1957)	10
Wyman v. Uphaus, 101 N.H. 139, 136 A 2d 221 (1957)	10, 12
Wyman v. Uphaus, 102 N.H. 461, 159 A 2d 160 (1960)	10

STATUTES

New Hampshire Laws 1957, Chapt. 178, p. 213	12
Chapt. 347, p. 538	5, 13
New Hampshire Laws 1961, Chapt. 224:1, p. 33	14
Chapt. 225, p. 402	14
New Hampshire Laws 1963, Chapt. 198:1, p. 201	14
Chapt. 199:1, p. 298	14
New Hampshire Laws 1965, Chapt. 239, p. 300	14
Chapt. 282, p. 470	14
New Hampshire Revised Statutes Annotated:	
Chapt. 491:20	3
Chapt. 588 3, 4, 5, 6, 7, 11, 15, 16, 21, 22, 28	
Chapt. 588:8-a (supp)	2,
4, 5, 14, 15	
Title 28, U.S.C. s. 1257 (2)	3
Title 50, U.S.C. s. 786, Subversive Activities Control Act (s. 7) 64 Stat. 987, 993	19, 29

UNITED STATES CONSTITUTION

	PAGE
First Amendment	4
Fourth Amendment	4
Fourteenth Amendment	4

MISCELLANEOUS

33 BU Law Review 337, (1953), Liacos, "Rights of Witnesses Before Congressional Committees"	30
Report of the Attorney General to the New Hampshire General Court (January 5, 1955)	3, 4, 6, 16, 19, 22, 23, 24, 25, 26, 27, 34

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ATTORNEY GENERAL OF THE
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APPEAL FROM THE SUPREME COURT
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BRIEF FOR APPELLEE

STATEMENT OF THE CASE

The various Attorneys General of the State of New Hampshire, pursuant to legislative mandate, acting as a legislative fact-finding committee, have, since 1953, extensively investigated the subject of subversion, and particularly communism as it relates to the State of New Hampshire. The overriding motive for said legislative mandate is the self-preservation and protection of the State, which can best be accomplished by a fact-finding

committee, in this instance the Attorney General, garnering relevant data to present to the legislature. Said data shall be the basis for possible future legislation to effectuate the self-preservation and protection of the State of New Hampshire.

Since June 12, 1955 the Appellant has been summonsed as a witness to testify as to his knowledge of past and present membership in and activities of the Communist Party in and affecting the State of New Hampshire. The Supreme Court of New Hampshire and the United States Supreme Court have consistently upheld the actions of the Attorney General and the validity of the investigating statutes while overruling Appellant. In spite of the many court rulings Appellant continues to assume a stolid posture and refuses to testify as requested.

Pursuant to the decisions of the courts in *Wyman v. DeGregory*, 103 N.H. 214, 169A 2d 1; aff'd 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961) the Appellant on November 12, 1963 purged himself of contempt by appearing at the Hillsborough County Court House and answering in the negative the question "Are you presently a member of the Communist Party?" This is the only direct answer Appellant has ever given to the Attorneys General. The Attorney General, at said hearing, attempted to direct some other questions to DeGregory. The Court declined to allow further questioning, ostensibly on the premise that once DeGregory had purged himself of contempt the Court's jurisdiction ceased and the Attorney General, in his capacity as a legislative fact-finding committee, should continue his probe for facts in the manner outlined by N.H. RSA Chapter 588:8-a (supp).

The foregoing is the plateau upon which the present proceedings are based. Because of the need for facts which could only be elicited from Appellant by extensive and detailed questioning concerning Communist Party activities

and membership in and affecting New Hampshire, present and past, further proceedings under the continuing investigatory authority of the delegated legislative committee were initiated on November 22, 1963. Appellant appeared and refused to answer certain questions propounded to him on the theory that the Attorney General had not laid a foundation upon which he could initiate his investigation and base his examination of Appellant. Whereupon the matter, as required by N.H. RSA Chapter 491:20, was transferred to the Superior Court. The Attorney General's foundation consisted of THE REPORT OF THE ATTORNEY GENERAL TO THE NEW HAMPSHIRE GENERAL COURT, January 5, 1955 [R. 14, Exhibit I] and the patently obvious nature of the Communist movement and its mode of operation. DeGregory then stated to the court he had no relationship or knowledge of the Communist activity in New Hampshire for the previous six and one-half years. [R. 15] Appellant was held in contempt of court for his failure to answer questions propounded to him by the Attorney General. The Court held that the Attorney General had laid the proper foundation to enable him to interrogate Appellant regarding the communist movement in and affecting New Hampshire.

A reserved case was filed and entered in the New Hampshire Supreme Court on October 22, 1964. The New Hampshire Supreme Court affirmed the decision of the Superior Court of May 27, 1964. *Attorney General v. DeGregory*, 106 N.H. 262, 209 A. 2d 712 (April 1965). This matter is now before the United States Supreme Court pursuant to Title 28, U.S. Code, § 1257 (2).

QUESTIONS PRESENTED

Did the application of RSA 588, with reference to Appellant's contempt citation in the instant case, violate

his constitutional rights of due process of law under the First, Fourth and Fourteenth Amendments to the United States Constitution? Otherwise stated: In light of the record has the State's interest been pressed, in this instance, to a point where it has come into fatal collision with the overriding constitutionally protected rights of Appellant?

- (a) Has the passage of time from the compilation of Exhibit 1 (Report of the Attorney General to the New Hampshire General Court, January 5, 1955) [R. 14] to the interrogation of DeGregory on November 22, 1963 been of such magnitude as to destroy the basis or foundation laid by the Attorney General in order to institute his investigation pursuant to N.H. RSA Chapter 588:8-a (Supp.) and to question DeGregory as to the subject matter of Communism? the basis of said foundation being said Exhibit 1 [R. 14] and the present patently obvious nature of the Communist movement and its mode of operation?
- (b) May a witness, merely by a general denial of subversive activity or of knowledge thereof, foreclose further pertinent inquiry into his activities, and control the form of the questions being propounded by the legislative fact finding committee?

The constitutionality of N. H. RSA 588 is not now in issue as it was not raised in the instant case; and, since its constitutionality has previously been upheld in *Wyman v. DeGregory*, 103 N.H. 214, 169, A. 2d, Aff'd, 368 U.S. 19, 7 L ed 2d 86, 82 S. Ct. 137 (1961).

SUMMARY OF ARGUMENT

The sole issue in the case at bar is the constitutionality of the application of N.H. RSA 588 with reference to Appellant and not the constitutionality of the statute. The New

Hampshire Supreme Court, long experienced in the field of legislative fact-finding actions, employed the appropriate legal tests. That is the New Hampshire Courts held "the legitimate and vital interests of the State has not been pressed in this instance to a point where it has come into fatal collision with the witnesses overriding constitutionally protected rights" *Attorney General v. DeGregory*, 106 N.H. 262, 209 A. 2d 712 (1965). The case is now before this Honorable Court on appeal to decide in effect whether there is any evidence in the record to support the position of the New Hampshire Courts.

The statute RSA 588 has been held constitutional. *DeGregory v. Attorney General*, 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961). Self-preservation is a legitimate function of government, and may be implemented in the manner prescribed in RSA 588. *Wyman v. Uphaus*, 360 U.S. 72, 3 L. ed. 2d 1090, 79 S. Ct. 1040 (1959); *Wyman v. DeGregory*, 103 N. H. 214, 169 A. 2d, 1 aff'd 368 U.S. 19, 7 L. ed. 2d 86, 82 S. Ct. 137 (1961). It is also clear that the New Hampshire Legislature wishes to be informed on all phases of the topic under investigation. N.H. Laws 1957, Chapter 347, p. 538.

In order for the Attorney General to initiate his investigations, certain circumstances must come into play in order for him to operate pursuant to N.H. RSA 588:8-a. The circumstances which trigger his investigation are "information which he deems reasonable or reliable relating to violations of the provisions of this chapter". . . . N. H. RSA 588:8-a.

The statute is not so narrow as to require specific violations of law to be shown prior to questioning a party as to his knowledge about them. The Attorney General is permitted to determine the presence of subversive people in the state and the extent of subversive activity generally in and affecting the state where his information relating to

violations of the provisions of RSA 588 is reasonable and reliable. *Wyman v. DeGregory*, 103 N.H. 214, 169 A 2d 1, aff'd 368 U.S. 19, 7 L. ed 2d 86, 82 S. Ct. 137 (1961). The Attorney General in the instant case was clothed with the following information:

(1) That the inherent nature of the Communist Party is today and has been such that it is a proper area for legislative investigation. Its aim is the eventual overthrow, by any means or at any cost, of our democratic form of government. The Communist Party's mode of operation is slow and methodical, by creating dissention and infiltrating key areas of our political, military, academic, and economic factions of society. Its membership and activity are kept secret with knowledge of such facts known by only a handful of members. Communism is the silent enemy which patiently waits to strike more like the proverbial "snake in the grass" than the "bull in the china shop". Note *Barenblatt v. U. S.* 360 U.S. 109, 128, 129, 3 L. ed. 2d 1115, 79 S. Ct. 1081 (1959); *Gibson v. Florida Legislative Committee* 372 U.S. 539, 547, 9 L. ed. 2d 929, 83 S. Ct. 889 (1963).

(2) Exhibit I, The Report of the Attorney General to the New Hampshire General Court, January 5, 1955 [R. 14] portrays Communist activity in and affecting the State of New Hampshire. District I, in Boston, Massachusetts, was the lead unit with respect to the New England area, with New Hampshire and its various cells and sub-cells being an integral part thereof. Major areas of concentration were World Fellowship, Inc., educational institutions, the P.T.A., and labor groups. There averaged fifty to one hundred hard core Communists in the state with many more sympathizers and "front organizations" in the foreground. The Party's mode of operation in the state was similar to that on a world basis as were their respective goals.

(3) The targets of Communist infiltration in New Hampshire are still present; military installations, educational institutions, labor unions, defense and aero-space industries. Also still present in the state are many of the hard core Communists and Communist sympathizers, including Hugo DeGregory the alleged leader of the Communist Party in New Hampshire.

The Attorney General, knowing the past and present aims and methods of operation of the Communist Party, and the past methods, aims, membership, and targets of the Communist Party in and affecting New Hampshire, coupled with the presence of these former members and sympathizers, including Appellant's presence in the State, it was reasonable for him to assume that subversives were present in the state and that there were violations of RSA 588. Thus the circumstances were present to "trigger" the Attorney General's legislative fact-finding investigation. The pre-emption of subversive investigation by the Federal Government as outlined in *Pennsylvania v. Nelson*, 350 U.S. 497, 100 L. ed. 640, 76 S. Ct. 477 (1956) does not apply to the present case as we are dealing with activity which directly affects the State of New Hampshire. *Uphaus v. Wyman*, 360 U.S. 72, 76, 3 L. ed 2d 1090, 79 S. Ct. 1040 (1959).

Once the fact-finding investigation has properly begun the Attorney General in order to call a specific witness must show a relationship or nexus between the subject under investigation and the witness. *Uphaus v. Wyman*, 360 U.S. 72, 78-80, 3 L. ed. 2d 1090, 79 S. Ct. 1040 (1959); *Gibson v. Florida Legislative Committee*, 372 U.S. 539, 9 L. ed. 2d 929, 83 S. Ct. 889 (1963); *Barenblatt v. U.S.*, 360 U.S. 109, 3 L. ed. 2d 1115, 79 S. Ct. 1081 (1959). A reading of the pertinent cases indicates that the nexus or relationship need not be of present origin if the information sought to be illicit was relevant to the present investigation. *Gibson v. Florida Legislative Committee*, *Supra*,